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'Flat Tax' could correct tobacco settlement inequity

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Is the Master Settlement Agreement in the best interests of Commonwealth Brands or the Commonwealth of Kentucky? One has to wonder.

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In his Feb. 17 letter, Spencer Coates, CEO of Commonwealth Brands, got his first comment right, "Kentucky needs all the revenue it can get." Unfortunately, after that he spends three pages trying to defend the Master Settlement Agreement (MSA) scheme that diverts an estimated \$150 million per year collected on Kentucky cigarette sales to New York, California, and other big states.

The real fact is Commonwealth Brands directly benefits from a loophole exemption in the MSA that short-changes Kentucky by a staggering \$10 million a year for sales made in the state, and enjoys a whopping \$50 million annual exemption for sales in all the other MSA states.

One has to wonder whose best interests the CEO of Commonwealth Brands has in mind

when he feigns concern for state revenue, especially when his company has already short-changed Kentucky by some \$60 million dollars since he signed the MSA in 1999. The fact is, Commonwealth Brands is concerned about maintaining its sweetheart exemption, which adds millions of dollars of profits to his company's bottom line every year, and all at the expense of Kentucky smokers and the Commonwealth of Kentucky.

It cannot be in the best interests of Kentucky to suffer declining revenues from the MSA. Companies such as Commonwealth Brands are already demanding reduced MSA payments each year because he and his big tobacco friends

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have invoked obscure provisions in the agreement that allow credits for taxes imposed by other states, or refunds of MSA payments because other companies have taken some market share, or supposedly received a better deal on joining the MSA. The big concern that Commonwealth Brands really has is that under a "flat tax" scenario, his company may finally have to pay fully to Kentucky for each and every carton of cigarettes it sells in the state. Now that's fair to the Commonwealth of Kentucky, and that's fair for everyone else selling in the state.

The flat tax is a straightforward approach to correcting the exemption inequity enjoyed by Commonwealth Brands and other sweetheart deal companies who joined the agreement -- and is much easier to explain than the laborious and convoluted defense of the MSA that Mr. Coates presented in this paper last week. First, the flat tax does not breach the MSA. The 1998 court decree issued by the Franklin Circuit Court imposing advertising and marketing restrictions on cigarette manufacturers will remain in place. The flat tax simply repeals the Kentucky escrow statute and replaces it with an across-the-board tax directly on manufacturers -- requiring all cigarette manufactures to pay the same amount to the commonwealth for the privilege of selling in the state. Will this result in litigation? Possibly, but would a tobacco manufacturer waste its time filing a suit against a sovereign state with the absolute power to tax, or litigate based on a decision handed down in Franklin Circuit Court on Jan. 26 that will allow an MSA company to get a credit for its sales in Kentucky? Mr. Coates, I bet you and your other big tobacco buddies will sue the MSA, after all, you've already been suing them for years to lower your MSA payments, so what's one more suit to keep your \$60 million dollar exemption in perpetuity? Better stick with what works -- no judge is ever going to enjoin Kentucky from collecting a legal tax on tobacco companies and you know it, and no judge is going to side with Commonwealth Brands on a complaint that it may have to pay the same four dollars a carton that everyone else will be expected to pay under a flat tax proposal.

Second, consult your attorney, State Rep. Rob Wilkey, about basic contract law. The consideration for Kentucky having received past payments from the MSA is that Kentucky has upheld its agreement not to bring further lawsuits against those manufacturers who signed the agreement. The Attorney General has upheld his side of the bargain not to sue, and no one is going to buy big tobacco scare tactics that Kentucky would have to refund this money -- especially a judge.

Third, of course Non-Participating Manufacturers (PNM's) support the flat tax. In 2004, your company lobbied hard to repeal a so-called "loophole" that allowed PNM's to pay less than the \$4 assessment. Now PNM's are working with legislators to end the MSA loophole that allows Commonwealth Brands to pay less than the \$4 assessment. I don't recall you mentioning that you only pay about \$3 per carton under the MSA, or that your cohort, Liggett Tobacco, only pays about \$1 per carton. You must have become all fired up about the Governor's proposal for only one reason, and that is to keep your low payments to Kentucky intact, and have everyone else pay more!

Let's face it Mr. Coates, the real disaster for Kentucky would be not receiving the \$150 million currently being diverted to N.Y. and other states that should be spent on programs for Kentucky farmers, early childhood development, education, smoking cessation, economic revitalization, or even public health. Adding insult to injury, under your cherished MSA scheme the amount Kentucky receives for these programs continues to decline. Because of the payment reductions you and the other big tobacco companies have taken, Kentucky's MSA payments have declined by 36 percent since they began in 2000. The reality is Commonwealth Brands cares about itself, and not about the Commonwealth of Kentucky.



CLARK CORSON

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CITMA is a national trade association that represents the interests of small tobacco companies around the country, including National Tobacco Company, which is based in Louisville. -- Editor.

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